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06-05-01 0359 #3

Attorney Docket No: 03768/09376

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| Applicant: | Varriale et al. |) | Examiner: | Not assigned |
| Serial No: | 09/675,464 |) | Group Art Unit: | Not assigned |
| Filed: | September 28, 2000 |) | Deposit Account No: | 50-1196 |
| Title: | Method and Apparatus for Multistage Liquid Filtration |) | | |

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OFFICE OF PETITIONS

Adjustment date: 08/24/2001 LGIBBS
06/07/2001 SHINASS1 00000049 09675464
01 FC-122 -130.00 OP

PETITION TO OBTAIN FILING DATE UNDER 37 C.F.R. § 1.53(e)

Assistant Commissioner of Patents
Washington, D.C. 20231

Repin. Ref: 08/24/2001 LGIBBS 0011044400
Date: 501196 Name/Number: 09675464
FC: 701

Dear Sir: \$130.00 CR

Applicants hereby petition, in accordance with 37 CFR § 1.53(e), to obtain an effective filing date of September 28, 2000 for the above-referenced application Serial No. 09/675,464 upon which a Notice of an Incomplete Nonprovisional Application was mailed April 5, 2001. The Notice of Incomplete Nonprovisional Application stated that a filing date had not been accorded to the above-referenced application because the application had been deposited without drawings. A copy of that Notice is being submitted herewith.

A. Petition To Obtain September 28, 2000 As Filing Date Under 37 C.F.R. §

1.53(E): Drawings Were Actually Submitted With Application

On September 28, 2000, to the best of the Applicants' attorneys' knowledge, a complete application, including 2 sheets of drawings (figures 1-4) for the above-referenced invention, was mailed by Express Mail to the Patent and Trademark Office.

A copy of the Express Mail certificate is enclosed as Attachment A.

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The Transmittal Form accompanying the application mailed by Express Mail on September 28, 2000, indicated that 2 sheets of drawings (figures 1-4) were included with the application. A copy of this Transmittal Form is enclosed as Attachment B.

A postcard for receipt purposes that indicates each item enclosed with the application was also included with the above-referenced application. The Postcard indicates that the Drawings were, in fact, part of the application as filed. After the application was sent to the Patent and Trademark Office, however, the Postcard Receipt was mailed back indicating that the application was missing the 2 sheets of drawings. A copy of this Postcard Receipt showing the indications is enclosed as Attachment C.

A photocopy of the complete application, including the associated documents as well as any drawings, is routinely placed into the signing attorney's file for the applicant before being Express Mailed to the Patent and Trademark Office. For the above-referenced application, this photocopy is present in the applicant's file, including the photocopy of both drawings. A copy of the two sheets of drawings (figures 1-4) is enclosed as Attachment D.

Our usual office practice is for the signing attorney and for their administrative assistant to check and cross-check for the inclusion of each item that constitutes a complete application before Express Mailing the application and the associated documents to the Patent and Trademark Office. Therefore, it is respectfully submitted that the above-referenced application was Express Mailed on September 28, 2000 to the Patent and Trademark Office together with the 2 sheets of drawings indicated on the Transmittal Form and Postcard Receipt.



The attached declarations attest to the fact that the signing attorney and his administrative assistant followed their routine office procedures for ensuring that all required items (including any drawings) were enclosed in the application packet before being Express Mailed to the Patent and Trademark Office. Therefore, Applicants submit that the two sheets of enclosed drawings were actually sent to the PTO on September 28, 2000 and that a filing date of September 28, 2000 should be accorded to the entire application .

B. First Alternative Petition To Obtain September 28, 2000 As Filing Date Under 37 C.F.R. § 1.53(E): Subject Matter Of Invention Does Not Require Drawings

The present invention is directed to an apparatus and process for the removal of undesired particulates and microorganisms from water and other liquids. More particularly, the present invention relates to an apparatus and process for the more efficient filtration of liquids such as water.

In the alternative, Applicants respectfully submit that even if the drawings were inadvertently omitted in the original filing of the application (which Applicants do not admit), the invention was of such a subject matter that drawings are not necessary for an understanding of the invention under 35 USC § 113. Therefore, September 28, 2000 should be accorded the filing date for the above-referenced application.

MPEP section 601.01(f) states that there are situations in which drawings are usually not considered necessary, namely, where the invention is directed towards (A) *coated articles or products*, (B) *articles made from a particular material or composition*,

(C) laminated structures, or (D) articles, apparatus, or systems where sole distinguishing feature is presence of a particular material.

Applicant respectfully submits that the apparatus claims of the present invention fall under category (B) recited above in MPEP 601.01(f). The present apparatus is directed to a multistage filtering apparatus wherein each stage is comprised of a material that, for example, removes microorganisms, removes organics and other non-biological components, or removes turbidity causing sediments. The apparatus claims of the present application are, for the most part, directed towards suitable materials for each of the filtering stages regardless of the actual structures indicated by the drawings. In addition, one of ordinary skill in the art should be able to understand the invention (both apparatus and process claims) completely without reference to the drawings. Thus, the drawings are not necessary to an understanding of the apparatus claims under 35 USC § 113 and a filing date of September 28, 2000 should be accorded to all the claims, including both the apparatus and process claims.

Therefore, if the petition for a filing date based on actual submission of the drawings is denied, Applicants respectfully submit that the present invention was of such a subject matter that drawings were not necessary for an understanding of the invention under 35 USC § 113. Accordingly, the Examiner is respectfully requested, in the alternative, to reconsider the Notice of Incomplete Nonprovisional Application mailed April 5, 2001 and establish September 28, 2000 as the filing date for the present application without the drawings. If this portion of the petition is granted and the first portion relating to actual submission is denied, then Applicants will submit an amendment deleting all references to the drawings.

C. Petition To Obtain September 28, 2000 As Filing Date Under 37 C.F.R. §

1.53(E): Cancel Apparatus Claims And Elect Process Claims

Finally, the MPEP at section 601.01(f) states, in part, that “it has been PTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113.” (*emphasis added*). In the present invention, independent claim 18 and its dependent claims 19-29 are directed to a multistage process for filtering impurities from a liquid. The present application, therefore, meets the requirement of having at least one process claim in order for the invention to be understandable without having drawings. Thus, the filing date of September 28, 2000 should have been accorded to the application pursuant to MPEP 601.01(f).

Therefore, if neither of the above portions of the petition are granted, the Applicants will cancel apparatus claims 1-17 and 30-47 and elect to proceed with only the process claims 18-29. In this case, September 28, 2000 should be established as the filing date for the present application.

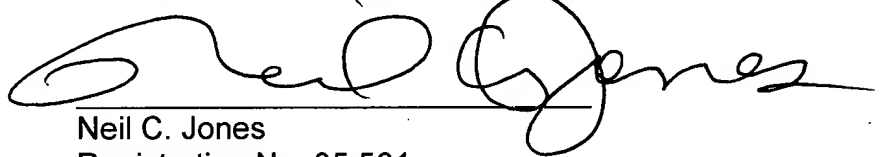
In addition, even though Applicants do not believe it is necessary to submit a Declaration at the time of filing to obtain a filing date, Applicants are now submitting an original Combined Declaration and Power of Attorney. This appears to be required in order to avoid having the proceeding terminated as indicated on the Notice of Incomplete Nonprovisional Application. If substitute Declarations are later required due to amending of the application, such substitute declarations will be submitted at that time.

The fee of \$130.00 that corresponds to a petition for obtaining a filing date for receiving a Notice of an Incomplete Nonprovisional Application as set forth in 37 CFR 1.17(h) is enclosed. However, it is respectfully requested that this fee be refunded if, in fact, a filing date is granted.

Please charge any additional fees required by this petition to Deposit Account No. 50-1196.

Respectfully requested,

NELSON MULLINS RILEY & SCARBOROUGH

A handwritten signature in black ink, appearing to read "Neil C. Jones", is written over a horizontal line.

Neil C. Jones
Registration No. 35,561

June 4, 2001
Date

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